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October 11, 2005

**RECEIVED**

**OCT 11 2005**

Federal Communications Commission  
Office of Secretary

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Re: SBC/AT&T Merger Application – WC Docket No. 05-65  
Verizon/MCI Merger Application – WC Docket No. 05-75

Dear Ms. Dortch:

Talk America (“Talk”) is a facilities-based telecommunications carrier with over 700,000 local line equivalents. At a time when many competitive local exchange carriers are exiting the market, Talk has expanded its facilities investment to over \$50 million dollars during the 2004-2005 period. Talk’s most significant area of operations is within the territory of SBC Communications (“SBC”), and especially in Michigan, where approximately one-half of all of Talk’s customers are located, including many customers obtained through Talk’s acquisition of LDMI Communications earlier this year. Talk provides its services through a combination of its own facilities, facilities and services purchased from SBC and other incumbent local exchange carriers (“ILECs”), including unbundled network elements (“UNEs”), and services and facilities purchased from competitive local exchange carriers (“CLECs”) and other competitive telecommunications carriers where they are economically available. Accordingly, Talk has taken a keen interest in the proposed mergers of SBC with AT&T and of Verizon with MCI and their probable effects on wholesale markets upon which Talk depends. These proposed transactions would radically change the landscape in which competitive carriers, such as Talk, conduct their business. Simply stated, the mergers will remove, in many markets in the Northeast, Midwest, Southwest, and California, the two current largest competitive providers of

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wholesale transport and high-capacity loop services, a topic which has been discussed in great detail in comments and *ex partes* filed in this docket.<sup>1</sup>

Because the mergers have the potential to radically transform the wholesale transport and high-capacity loop services marketplace, it is critical to consider what impact the mergers, if permitted, would have on the assumptions underlying the Commission's decisions in its *Triennial Review Remand Order* ("TRRO") to delist unbundled DS1 and DS3 loops and transport in certain wire centers and along certain routes, respectively.<sup>2</sup> Specifically, where the number of business lines served within a wire center exceeds certain thresholds *and* the number of fiber-based collocators is three or more, the Commission has found that CLECs are not impaired without access to unbundled DS3 loops or, under certain conditions, both DS3 and DS1 loops in that wire center.<sup>3</sup> With respect to DS1 and DS3 transport along routes between any two ILEC wire centers, the Commission found that where, for each of the two wire centers, where the number of business lines served within each wire center exceeds certain thresholds *or* the number of fiber-based collocators is three or more, CLECs are not impaired without unbundled access along the route between the two wire centers to either unbundled DS3 transport or both DS3 and DS1 transport.<sup>4</sup> It was well known to the Commission when it adopted its *TRRO*, as it was throughout the industry, that in the vast majority metropolitan areas within the country where some level of local competition existed, the most frequent alternative providers of high capacity DS1 and DS3 loops and transport and the most frequent fiber-based collocators were (and still are) AT&T and MCI. Thus, it is beyond argument that a pillar of the Commission's decision regarding unbundled loops and transport in the *TRRO* was the continued widespread competitive presence that AT&T and MCI would bring.

The Commission's *TRRO* was adopted and the text released essentially contemporaneously with the announcements that SBC intended to acquire AT&T and that Verizon sought to merge with MCI. Indeed, almost before the ink on the page had dried and the text of the *TRRO* was released, the Commission had already issued public notices regarding the mergers. Consequently, without debating their merits otherwise, if the conditions under which DS1 and DS3 loops and transport may be delisted by ILECs are not to be eviscerated in much of the vast SBC and Verizon operating territories, these two ILECs must both be required to modify and reissue their lists of wire center information *without counting either AT&T or MCI as fiber-based collocators as a condition of any merger approval*.

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<sup>1</sup> E.g., Petition to Deny of Cbeyond Communications, *et al.*, WC Docket No. 05-65, April 25, 2005 ("Petition to Deny SBC"); Petition to Deny of Cbeyond Communications, *et al.*, WC Docket No. 05-75, May 9, 2005 ("Petition to Deny Verizon"); Letter of Brad E. Mutschelknaus, Counsel for Cbeyond Communications, *et al.* to Marlene H. Dortch, FCC, filed in WC Docket No. 05-65, dated July 14, 2005 ("July 14 Letter").

<sup>2</sup> *In the Matter of Unbundled Access to Network Elements*, Order on Remand, WC Docket No. 04-313, FCC 04-290, 20 FCC Rcd 2533 (rel. Feb. 4, 2005)

<sup>3</sup> *Id.* at ¶ 146.

<sup>4</sup> *Id.* at ¶¶ 112, 118.

For each ILEC, removing its merger partner from the list of collocators is appropriate because affiliated entities that collocate are not properly counted under the FCC's rules. At the time each of these two ILECs issued its list, it had publicly announced an intent to acquire its merger partner, an event which, in itself, has stilled its merger partner's drive to compete in-region.

Regarding the inclusion of MCI in SBC collocator counts and AT&T in Verizon's counts, history has shown that the two ILEC's have very weakly followed through on any promises to compete against one another, circumstances which are well documented in the record in this proceeding.<sup>5</sup> Accordingly, because the Commission's assumption in its *TRRO* was that fiber-based collocators would have not only the ability, but the incentive as well, to compete with the ILECs fully in the wholesale markets, the Commission should make as part of the condition that SBC and Verizon not count MCI or AT&T, respectively, as fiber-based collocators.

In this regard, Talk supports the proposals of other commenters regarding merger conditions affecting each ILEC's count of fiber-based collocators. Specifically, Talk supports the proposals of BridgeCom *et al.* (1) that SBC and Verizon each eliminate *both* AT&T and MCI from their count of fiber-based collocators in their wire centers if the mergers are approved and (2) that the Commission suspend, for five years after the mergers, if approved, the "one-way ratchet" rule for each of these ILECs, under which in other circumstances the impairment status of a wire center, once the thresholds for business centers and/or fiber-based collocators are reached, they are considered fulfilled irrevocably regardless of subsequent changes in the number of business lines or collocators.<sup>6</sup>

In addition to the conditions proposed by Bridgecom *et al.*, the Commission should also, if it otherwise is going to approve the merger, both (a) clarify, at least for SBC and Verizon, the bases on which the ILECs report the business lines and number of fiber-based collocators in their wire centers and (b) allow CLECs greater ease of access to the data underlying these ILEC's lists. These additional conditions, over and above the existing rules adopted in the *TRRO*, are appropriate given that each carrier will no longer feel the pressures from its two largest wholesale competitors, requiring CLECs such as Talk to weigh the additional costs of relying more than they do today on wholesale loops and transport provided by SBC and Verizon. Given the decisions that CLECs would face in a post-merger world, the hurdles that CLECs must clear

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<sup>5</sup> E.g., *Petition to Deny SBC* at 41-59; *Petition to Deny Veirzon* at 45-65; *July 14 Letter* at 22.

<sup>6</sup> Letter of Brad E. Mutschelknaus, Counsel for BridgeCom International, *et al.*, to Marlene H. Dortch, FCC, filed in WC Dockets Nos. 05-65 and 05-75, dated September 22, 2005, at 6-7.

in order to challenge or confirm that unbundled DS1 and DS3 loops and transport are legitimately no longer available in certain wire centers or along certain routes must be minimized. CLECs must be able to obtain those elements on an unbundled basis, if appropriate under the Commission's Rules, without undue delay or burden. Lack of reliable information regarding competitive fiber based collocators, for example, is a disincentive to a CLEC like Talk further expanding its network's reach. Talk America must know whether a wire center legitimately is impaired or soon may be impaired prior to investing in additional facilities in that wire center. Indeed, Talk America is intending to expand into new wire centers in several small towns in Michigan and exploring plans to expand into others. It is extremely difficult for Talk to reasonably assess whether such expansions would be prudent investments without a sense of the number of fiber based collocators legitimately in those wire centers. For the foregoing reasons, as a condition of merger:

- ***SBC and Verizon should each be required to restate their lists using the most current information.*** Talk has learned, from its own review of the information SBC has filed with the Commission in support of its wire center lists, that SBC used older ARMIS data. This was confirmed in the recent Dearborn Fairborn case before the Michigan Public Service Commission, where the state commission found that SBC should have used the most current data when it made its reports.<sup>7</sup> The Commission should, in conjunction with SBC and Verizon's other reporting requirements discussed herein, mandate that the ILECs use the most current business line data, namely the most currently reported ARMIS data (which includes data assembled for the carrier's ARMIS reports, even if not yet submitted in that format), UNE-L data, and UNE-P data (for as long as the UNE-P obligations exists in any form). Reporting updated information for all of SBC's and Verizon's wire centers, except for those which the ILECs report as Tier 3 wire centers, is appropriate because, as a result of the merger, the entire competitive situations in their operating territories, for all practical purposes, will be reset.
- ***SBC and Verizon should update their wire center lists on a regular basis, once every three months.*** Unless SBC and Verizon are required to regularly update their lists, then there will be no efficient way for CLECs to know if a wire center that previously has met a threshold has fallen back below that threshold. This condition would have limits. Specifically, the ILECs would not need to update information for wire centers which they treat as Tier 3 wire centers, i.e., do not have at least 24,000 lines or at least 3 fiber-based collocators. Further, for those wire centers for which updated information would otherwise be required, if SBC or Verizon has reported at least 5000 business lines above the threshold for the status claimed for the wire center or there are at least six collocators, then SBC or Verizon need not update the business line or collocator information, respectively, for that wire center. Of course, if a "less-impaired" status is subsequently

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<sup>7</sup> *In the Matter of Implementation of Accessible Letters of SBC Michigan and Verizon*, Order, Case No. U-14447, Sept. 20, 2005, at 5-6 (2003 data used when 2004 data had already been gathered).

claimed by the ILEC for that wire center, e.g., movement from Tier 3 to Tier 2 or from Tier 2 to Tier 1, then regular updating would once again be required.

- ***SBC and Verizon should remove from their lists any collocators that are simply cross-connected to the fiber of another collocator.*** In a recent decision from the Michigan PSC regarding SBC's Dearborn Fairborn wire center, the Commission found that SBC included in its count at least one collocator that merely cross-connected to the fiber of another collocator rather than controlling and operating its own fiber-facilities.<sup>8</sup> The PSC's ruling correctly interpreted the Commission's Rules to allow only those collocators to be included that, by their method of collocation, independently demonstrated that they were potential wholesale competitors. Similarly, the Commission should require Verizon and SBC each to restate their lists excluding cross-connecting collocators, if any, leaving only those which control and operate their own fiber facilities.
- ***SBC and Verizon should exclude non-business lines from their DS1 and DS3 UNE-L counts.*** In the Dearborn Fairborn wire center case, the Michigan PSC found that SBC included in its wire center data UNE loops that were used for residential purposes.<sup>9</sup> The Commission should make clear that SBC and Verizon, when reporting their updated list information are to exclude non-business lines from UNE-L data, as well as UNE-P and ARMIS data.
- ***SBC and Verizon should be required to respond to requests for CLEC-specific information within three (3) business days.*** Talk recently requested information from one of the ILECs, SBC, regarding those wire centers in which the Applicant listed Talk as a fiber-based collocator. The review of this information would allow Talk to ensure that it was not improperly treated as a fiber-based collocator by the ILEC when Talk was in fact not fiber-based. Since such information had to be compiled by the ILEC to report to the FCC, Talk reasonably expected a prompt response. However, it took over two weeks before the ILEC responded. This period of delay is indefensible for data which the ILEC has already compiled and should have readily at its disposal. As a condition of any merger approval, the Commission should expressly require SBC and Verizon to designate a contact for any CLEC to make requests to view information included within the wire center tabulations that is specific to that CLEC. Upon receiving a written request for such information, the ILEC should be required to provide that information within three (3) business days, unless the CLEC agrees to a delay.

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<sup>8</sup> *Id.* at 9-11.

<sup>9</sup> *Id.* at 7.

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By supporting the conditions described in this letter and proposing additional ones, Talk does not mean to suggest that other conditions proposed by participants in these dockets are unnecessary or unwarranted. Instead, Talk writes this letter stemming from its own experiences as a participant in the Dearborn Fairborn decision, its efforts to view information supporting SBC's wire center lists, and considerations affecting its business plans to make additional investments in facilities and network, as outlined herein. Talk reserves its right to support or otherwise comment on all other potential merger conditions not discussed in this letter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Edward A. Yorkgitis, Jr.', with a long horizontal flourish extending to the right.

Edward A. Yorkgitis, Jr.  
Counsel for Talk America

Cc: Chairman Kevin Martin  
Commissioner Kathleen Abernathy  
Commissioner Michael Copps  
Commissioner Jonathan Adelstein  
Daniel Gonzalez  
Michelle Carey  
Russ Hanser  
Jessica Rosenwerfel  
Scott Bergmann  
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